

JURISDICTION OF THE COURT OF CLAIMS.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

IN REFERENCE TO

The bill (H. R. 3481) "extending the jurisdiction of the Court of Claims, and for other purposes," with accompanying papers.

JUNE 13, 1876.—Referred to the Committee on Patents and ordered to be printed.

TREASURY DEPARTMENT, *Washington, D. C., June 12, 1876.*

SIR: I have the honor to acknowledge the receipt of your letter of the 30th ultimo, inclosing copy of the bill (H. R. 3481) "extending the jurisdiction of the Court of Claims," &c., together with executive documents, the same being transmitted for the consideration, information, and advice of this Department.

In compliance with your request that I submit my views with reference to the bill, I would say:

That I approve its apparent object, viz, the establishment of a tribunal and a method of procedure whereby parties owning or claiming patent-rights which have been or may be used in the public service may establish the rights, prove the use, and through the judgment of the tribunal receive from the United States the compensation justly and equitably due for such use.

I am of the opinion that jurisdiction for this purpose may properly be given to the Court of Claims. The method of procedure proposed in the bill I understand has been approved by the Attorney-General, and, with some modifications for the further protection of the rights and interests of the United States, meets the approbation of the Commissioner of Patents.

In regard to the phraseology of the bill as clearly expressing its apparent intent, I desire to call the attention of the committee to those portions which are supposed to define the principle upon which the court shall award compensation or compute the sum to be paid to the claimant by the United States. While it seems intended that the sum to be paid shall not exceed in any case the value or profit derived by the United States from the use of the right, yet this purpose does not appear to me to be so clearly expressed that the court might not, in its

discretion, award compensation upon the principle of damage done to the claimant, as in suits in equity between private parties in the circuit courts. If this is not the intent of the act, I would suggest that a proviso be added to section 4, in substance as follows :

Provided, That the rate of compensation and the sum awarded by the court shall, in all cases admitting of such computation, be computed upon the basis of a reasonable royalty due for the use of the claimant's right ; and in no case shall the sum so awarded exceed the profit or benefit derived by the United States from the use of such right.

It appears to be the purpose of this contemplated legislation that no contracts shall hereafter be made with the owners of patent-rights for the use of such rights, but that when necessity or the interests of the Government shall require their use, they will be used without contract or the consent of the owners, who will be remitted to their remedy under this act. That in this way the officers of the Government may avoid the difficulty of deciding conflicting rights, and escape the danger of paying for an assumed right which may have no foundation in law.

Upon examination of the bill it is not found that the power of these several heads of the Departments, "or any other officer of the United States," to use patented inventions at their discretion, is in any way limited. This power, in connection with the provisions of section 12, that the judgments of the court, in the absence of a general appropriation for the payment of such judgments, may be paid out of any moneys in the Treasury not otherwise appropriated, gives to any officer the power to involve the United States in debt and consequent expenditure without the consent or prevision of Congress, and to that extent limits the control of that body over the yearly expenses of the Government.

The objection to the permanent and indefinite appropriation provided in section 12 is, therefore, obvious. To retain for Congress as far as possible the control over the expenditure which will result from this act, I would recommend that section 12 be amended by striking out all from the twenty-first to the twenty-sixth line inclusive ; also by striking out in the fourteenth, fifteenth, and sixteenth lines the words "and shall thereupon be paid out of any general appropriation in relation to judgments of said Court of Claims or for private claims ;" and in lieu thereof insert, "and shall thereupon be paid out of the appropriations which shall annually be made for the payment of the judgments of said court rendered under the provisions of this act ;" so that said section, after the word "claims" in the twelfth line, shall read as follows: "And the same, when presented to the Secretary of the Treasury aforesaid, shall have the same effect as now provided by law, and shall thereupon be paid out of the appropriations which shall annually be made for the payment of the judgments of said court rendered under the provisions of this act ; and the payment of such judgment shall be in full satisfaction for all claims for compensation for the use of such patented invention or improvements up to the time of the making and entering of such judgment or decree thereon by said court, and no longer."

Whether or not the bill shall be amended as above, or if Congress shall decide that the results to be attained by a law of this nature will be so beneficial as to justify such a deviation from the law which forbids the payment of any moneys or the incurring any debt for ordinary expenses of the Government in excess of the annual appropriations, it seems to me important that in this bill, or in some independent act, the discretionary power to use patented inventions should be confided only to the heads of the several Executive Departments, and that all subordinate officers should be forbidden to use them unless previously authorized by the written instructions of their official head. If confined

to heads of Departments the responsibility will be limited to a few persons, and it may be presumed that the power will be exercised with greater care and deliberation than if intrusted to the many subordinates.

In compliance with your request I inclose a copy of your letter of May 30. The printed documents (five in number) accompanying your communication are herewith returned.

Very respectfully,

B. H. BRISTOW,
Secretary.

Hon. SAMUEL A. DOBBINS,
Chairman Subcommittee on Patents, House of Representatives.

HOUSE OF REPRESENTATIVES,
COMMITTEE ROOM ON PATENTS,
Washington, D. C., May 30, 1876.

SIR: Herewith inclosed I have the honor to transmit to you for consideration, information, and advice House bill No. 3481, "Extending the jurisdiction of the Court of Claims of the United States, and for other purposes." This bill is now pending before the Committee on Patents, and has been referred to a subcommittee of which I am chairman.

It has been deemed advisable to submit this bill to you for the purposes above indicated. Will you, therefore, please examine it and return the same at an early day, with such recommendations as you may be pleased to make with reference to the matter contained therein.

To aid you in such examination and to facilitate action thereon, I inclose herewith several executive documents printed by the order of the House and relating to such bill, and now before the above-named committee, the same having been there referred by the order of the House.

Please return with your answer hereto the inclosed bill and a true copy of this letter; also the inclosures, four in number.

I have the honor to be, very respectfully, your obedient servant,
SAMUEL A. DOBBINS,

Chairman of Subcommittee on Patents.

The Hon. SECRETARY OF THE TREASURY.

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